



**State of Hawaii  
High Technology Development Corp.**

LEGAL AD DATE: June 16, 2015

**REQUEST FOR PROPOSALS  
No. RFP-16-001-HTDC  
SEALED PROPOSALS  
FOR  
Business Mentors  
to Support Neighbor Island Innovation Companies**

**STATE OF HAWAII  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT,  
AND TOURISM**

WILL BE RECEIVED UP TO 12:00 P.M. (HST) ON

JULY 17, 2015

IN THE HTDC OFFICE 2800 WOODLAWN DR. SUITE 100, HONOLULU, HAWAII 96822.

DIRECT QUESTIONS RELATING TO THIS SOLICITATION TO SANDI KANEMORI, TELEPHONE (808)

539-3616, FAX (808) 539-3795 OR E-MAIL AT [RFP@HTDC.ORG](mailto:RFP@HTDC.ORG) SUBJECT: RFP-15-006-HTDC

  
\_\_\_\_\_  
Len Higashi  
Procurement Officer

RFP-16-001-HTDC

High Technology Development Corporation  
Name of Company

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**SECTION ONE**  
**INTRODUCTION AND KEY DATES**

**1.1 INTRODUCTION**

The High Technology Development Corporation (HTDC), an agency of the State of Hawaii (State), is seeking qualified business mentors to assist innovative small businesses on the islands of Maui, Hawaii Island, and Kauai. HTDC is seeking mentors to support its new Neighbor Island Innovation Initiative (NI3) program.

Minimum: One (1) mentor for Maui and one (1) mentor for Hawaii Island, and

Maximum: One (1) mentor in Maui, two (2) mentors for Hawaii Island, and one (1) mentor on Kauai.

After the 12 month contract period, if funds are available, HTDC may extend the contract for the mentors and issue another RFP solicitation as required, up to the maximum described above.

**1.2 CANCELLATION**

The RFP may be cancelled and any or all applications rejected in whole or in part, without liability, when it is determined to be in the best interest of the State.

**1.3 TERMS AND ACRONYMS USED THROUGHOUT THE SOLICITATION**

Applicant	= Any individual, partnership, firm, corporation, joint venture, or representative or agent, submitting an application in response to this solicitation.
Application/Proposal	= These terms may be used interchangeably
CA	= Contract Administrator
FY	= Fiscal Year
GC	= General Conditions, issued by the Department of the Attorney General
GET	= General Excise Tax
HAR	= Hawaii Administrative Rules
HRS	= Hawaii Revised Statutes
HTDC	= High Technology Development Corporation
IH	= INNOVATE Hawaii
MEP	= Manufacturing Extension Partnership
Procurement Officer	= The contracting officer for the State of Hawaii, High Technology Development Corporation
RFP	= Request for Proposals
State	= State of Hawaii, including each department and political subdivision

## 1.4 REGISTRATION

It is highly recommended that all interested Offerors register. If you do not register, any applicable Addenda and subsequent information in regards to this RFP will not be sent to you, and proposals may be disqualified for consideration.

Send registration to Sandi Kanemori:

Email: [rfp@htdc.org](mailto:rfp@htdc.org)

Provide the following information:

- |   |   |
|---|---|
| <input type="checkbox"/> Name of Company        | <input type="checkbox"/> Mailing Address  |
| <input type="checkbox"/> Name of Contact Person | <input type="checkbox"/> Telephone Number |
| <input type="checkbox"/> Solicitation Number    | <input type="checkbox"/> Email Address    |

## 1.5 RFP SCHEDULE AND SIGNIFICANT DATES

The schedule set out herein represents the State's best estimate of the schedule that will be followed. All times indicated are Hawaii Standard Time (HST). If a component of this schedule, such as "Initial Deadline to Submit Applications" date is delayed, the rest of the schedule will likely be shifted by the same number of days. The approximate schedule is as follows:

Release of Request for Proposals	June 16, 2015
Due date to Submit Questions:  Email: <a href="mailto:rfp@htdc.org">rfp@htdc.org</a> Subject: NI3, RFP-15-006-HTDC: Questions	June 30, 2015 12:00 P.M. (HST)
State's Response to Questions	July 2, 2015
<b>PROPOSALS DUE</b>	<b>July 17, 2015 12:00 P.M. (HST)</b>
Proposal Evaluations	July 20-24, 2015 (estimate)
Discussion with Priority Listed Offerors (if necessary)	July 25-31, 2015 (estimate)
Best and Final Offer (if necessary)	August 5, 2015 (estimate)
Notice of Award	August 10, 2015 (estimate)
Contract Start Date	September 1, 2015 (estimate)

## 1.6 QUESTIONS AND ANSWERS PRIOR TO OPENING OF PROPOSALS

All questions shall be submitted by the due date specified in Section 1.5, *RFP Schedule and Significant Dates*, as amended.

The State will respond to questions through Addenda/Amendments by the date specified in Section 1.5, *RFP Schedule and Significant Dates*, as amended.

## **1.7 TERM OF CONTRACT**

The contract shall be for a period of twelve (12) months. At HTDC's discretion (dependent on funding availability, mentor performance, program effectiveness, etc), unless terminated, the CONTRACTOR and the STATE may extend the term of the contract at the same rate for two (2) additional one (1) year periods or portions thereof without the necessity of re-soliciting, upon mutual agreement in writing at least sixty days prior to the expiration of the contract, subject to the availability of funding.

The contract will be cancelled if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the initial term of the contract. The State will notify the Contractor on a timely basis that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period.

## **1.8 OFFICIAL CONTACT PERSON AND CONTRACT ADMINISTRATOR**

The Official Contact person for all communications regarding this RFP is:

Sandi Kanemori, Contracts Administrator  
High Technology Development Corporation  
2800 Woodlawn Drive, Suite 100  
Honolulu, HI 96822  
Phone: (808) 539-3616  
Fax: (808) 539-3795  
Email: [rfp@htdc.org](mailto:rfp@htdc.org)

## SECTION TWO

### **BACKGROUND AND SCOPE OF WORK**

#### **2.1 PROGRAM OVERVIEW**

The [High Technology Development Corporation](#) (HTDC) is leading the State of Hawaii's effort to grow the technology industry sector with the objective of diversifying the economy and creating clean, high-wage job opportunities for the people of the State. As an attached agency to the Department of Business Economic Development and Tourism (DBEDT), HTDC is responsible for defining the State of Hawaii's tech-based economic development agenda.

HTDC currently provides business mentorship support to innovative small businesses through its tech incubation and INNOVATE Hawaii programs. HTDC is expanding its statewide support for innovative small businesses through the Neighbor Island Innovation Initiative (NI3). The purpose of the program is to provide business and technical assistance not readily available to companies on the neighbor islands. The goal is to advance companies to the next growth level in product development, sales or investment.

The NI3 program seeks out innovative small businesses in areas currently under supported by HTDC on the neighbor islands and provides them access to mentorship and technical assistance. The NI3 program is modeled after the Maryland Technology Development Corporation's (TEDCO) Rural Business Innovation Initiative (RBI2). The RBI2 program mentored 154 Maryland companies, of those, 48 received additional technical assistance grants and 25 progressed to receive downstream investment funding. The NI3 program tailors the RBI2 model to meet the unique geographical challenges of an island state.

HTDC is seeking qualified business mentors to support the program.

#### **2.2 SCOPE OF WORK**

HTDC is immediately seeking business consultants who are able to provide on-site mentoring to innovative small businesses on Hawaii Island, Maui, and Kauai. The selected applicants will have specific knowledge and experience relevant to growing a technology driven business in Hawaii. The selected applicants will have a wide spectrum of education, training, and experience to support clients from various industries.

The general responsibilities of the mentors will be to:

- find and evaluate potential clients for program eligibility
- provide business consulting assistance on an ongoing basis
- represent HTDC at networking events and to market the program
- report metrics on the progress for each of the clients

Mentors work closely with company clients on the client's schedule and at the client's business. Mentors work with the companies to identify critical issues that hinder business growth. Together they define project opportunities that can elevate the company to the next level of growth. Select qualified projects will be offered technical

assistance at a subsidized rate or provided as a grant if additional funding becomes available.

The mentors work independently, representing HTDC in their region. The mentors may also draw on the HTDC staff, other government assistance programs, and their personal network of peers (uncompensated) to support the clients.

## **2.3 PROGRAM PLAN**

HTDC intends to hire multiple mentors as cited in Section 1.1. However, due to budget, HTDC may need to limit the number of mentors hired this year. In that scenario, HTDC intends to issue a subsequent RFP to complete staffing the program. The HTDC team and our partners will host networking events/information sessions in Maui, Hilo, Kona, and Kauai to introduce the NI3 program and the local mentors.

The mentors will be responsible for meeting with all prospective companies for an initial assessment. To be eligible to receive mentoring and project assistance, companies must meet the following criteria:

- Developing new technologies/products or utilizing technology to scale their business
- Fewer than 16 employees
- Annual revenues \$1 million or less

The mentors will each identify the strongest prospects with high growth potential in their respective geographical districts. The mentors will directly assist the selected companies working approximately 20 hours per week of 100% state subsidized consulting in key business areas such as business strategy, customer development, product development, etc. and help them grow and/or prepare them to compete for downstream funding. The mentors will help the company define a roadmap and identify key actions required to take the business into the next level of growth. Select qualified projects will be offered technical assistance at a subsidized rate or provided as a grant if additional funding becomes available. Manufacturing assistance will be provided by the HTDC INNOVATE Hawaii program for qualified clients.

Companies are provided ongoing long-term mentoring until it is deemed the client no longer needs assistance or the company outgrows the program client definition. As companies grow, they may not need as many mentoring hours, but periodic check-ins.

Each year will end with a showcase day where the mentored companies can demonstrate their progress. The showcases will occur on each island. The companies will demonstrate their products and explain how the NI3 program has helped their businesses grow to legislators, congressional delegates, economic development officials, and community leaders. Highlighting economic success of these innovation and tech companies will reveal how critical this industry is to all the islands and exhibit the need for mentoring and technical assistance programs such as NI3.

## **2.4 CONSULTING**

The mentors will be responsible for assisting the companies in various areas including but not limited to:

## 1. General Business

- a. Clarify company's vision and value proposition.
- b. Review company's existing product(s) and market positioning.
- c. Analyze company's business model and financial plan.
- d. Assess the business efficiency (e.g. effective use of technology)
- e. Mentor on leadership skills, team building, and growing a company.
- f. Assess gaps in team and identify plan to address.
- g. Develop a plan for growth within the parameters of cost and profitability.
- h. Navigate and leverage available support programs.

## 2. Strategic Planning and Marketing

Provide detailed advice and services in the areas of strategic planning, venture funding, business and market development, and customer communication.

- a. Provide detailed recommendations for capital needs, sources of financing (including alternate financing options), cost break downs for goods and services, operations, personnel, and projected return on investment.
- b. Develop strategies for penetrating or expanding the marketplace including strategic partnerships with suppliers and distribution channels.
- c. Develop a marketing strategy for reaching a global market from Hawaii. Recommend media channels for each type of exposure including budget requirements and a monitoring process.
- d. Assist with price optimization.
- e. Refine pitch for various audiences including investors and customers.

## 3. Product Development

Create product development and commercialization plans with technical teams.

- a. Provide guidance on the product development process.
- b. Review and assist with grant applications and commercialization plans.
- c. Assist with lean and agile development processes.
- d. Advise on best practices for each phase of product development.
- e. Recommend techniques to monitor costs, losses, and unexpected events.
- f. Provide domain expertise in areas such as rapid prototyping, manufacturing, software development, beta testing, FDA and OSHA regulatory compliance, cost accounting, ISO certification, etc.

Applicants need not be highly proficient in all the disciplines mentioned above. However, qualified mentors will have general knowledge over a large domain of disciplines and industries beyond the areas described. They also have the ability to efficiently research on behalf of the company and can draw upon a large network of resources and contacts. Mentors are expected to help companies with limited resources obtain the guidance they need.

Qualified applicants will have experience as a founder and/or executive in a company with direct product development and commercialization experience. Qualified applicants will have demonstrated experience within the communities they are proposing to support.



Mentors will also suggest topics for HTDC business training workshop and work with HTDC to lead, execute, and/or coordinate workshops with on-island resources.

Mentors shall not engage in paid consulting services with the NI3 client companies outside the scope of the program (unless requested and authorized by HTDC).

## **2.5 REPORTING**

Mentors are responsible for weekly NI3 team conference calls to discuss client issues and needs, documenting notes from all meetings, keeping timesheets, monitoring the client's performance, and generating key metric reports for HTDC. A Customer Relationship Management (CRM) software tool will be provided by HTDC for documentation and efficient communication between the mentors and the HTDC staff.

## **2.6 TRAVEL**

The mentors are required to meet clients for regularly scheduled meetings that fit the client's schedule and at the client's business. The meetings will be in-person and will also include follow on discussions through email, phone, chat, or web conference. It is anticipated that meetings may occur at night or on weekends.

The mentors are required to attend quarterly NI3 mentor coordination meetings on Oahu to meet with the HTDC team and the mentors from the other islands. The purpose of the meeting will be to discuss the industry trends on each island, program success and shortcomings, and plans for the future.

Compensation for mileage and travel expenses will be provided in the contract. Also see notes on driving/travel time under pricing information in 3.3, Section C, Pricing.

2.6.1 Mentors for Hawaii Island. In the first year, one or two mentors will be selected for Hawaii Island, depending on budget. In the best scenario, one mentor will be selected for East Hawaii and one for West Hawaii. However, if only one mentor is selected, he/she will service the Hilo and Kona regions of Hawaii which may require significant mileage. In the second year, HTDC intends to add a second mentor and divide the service areas so that there are dedicated mentors to serve East and West Hawaii or however deemed most efficient by HTDC.

## **SECTION THREE**

### **PROPOSAL FORMAT, CONTENT, AND SUBMISSION**

#### **3.1 REQUIRED REVIEW BY OFFEROR**

- 3.1.1 Before submitting a proposal, each Offeror must thoroughly and carefully examine this RFP, any attachment, addendum, and other relevant document, to ensure Offeror understands the requirements of the RFP. Offeror must also become familiar with State, local, and Federal laws, statutes, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work required.
- 3.1.2 Should Offeror find defects and questionable or objectionable items in the RFP, Offeror shall notify HTDC in writing prior to the deadline for written questions as stated in the RFP *Schedule and Significant Dates*, Section 1.5, as amended. This will allow the issuance of any necessary corrections and/or amendments to the RFP by addendum, and mitigate reliance on a defective solicitation and exposure of proposal(s) upon which award could not be made.

#### **3.2 PROPOSAL OBJECTIVES**

- 3.2.1 One of the objectives of this RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposals. The evaluation process must also be manageable and effective.
- 3.2.2 Proposals shall be prepared in a straightforward and concise manner, in a format that is reasonably consistent and appropriate for the purpose. Emphasis will be on completeness and clarity and content.
- 3.2.3 When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the tasks described in this RFP and any supplemental tasks the Offeror has identified as necessary to successfully complete the obligations outlined in this RFP.
- 3.2.4 The proposal shall describe in detail the Offeror's ability and availability of services to meet the goals and objectives of this RFP as stated in Section 2.2 SCOPE OF WORK.
- 3.2.5 Offeror shall submit a proposal that includes an overall strategy, timeline and plan for the work proposed as well as expected results and possible shortfalls.
- 3.2.6 To be considered responsive, the Offeror's proposal shall respond to and include all items specified in this RFP and any subsequent addendum. Any proposal offering any other set of terms and conditions that conflict with the terms and conditions provided in the RFP or in any subsequent addendum may be rejected without further consideration.

### 3.3 PROPOSAL FORMS & CONTENTS

Offerer to provide all of the information requested in this RFP in the order specified below. The Proposal must be organized into sections, following the exact format using all titles, subtitles, and numbering, with tabs separating each section described below. Each section must be addressed individually and pages must be numbered.

**The proposal shall be organized in the following sections and as listed below.**

#### **A. Proposal Transmittal.**

A transmittal or cover letter to be included on company letterhead to confirm that the Offeror shall comply with the requirements, provisions, terms and conditions specified in this RFP.

#### **B. Attachment 1, Offer Form.**

Offer Form, is required to be completed using Offeror's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, in the appropriate space on Offer Form, OF-1 (SECTION SEVEN, Attachment 1). Failure to do so may delay proper execution of the Contract.

The Offeror's authorized signature on the Offer Form, OF-1 shall be an original signature in ink, which shall be required before an award, if any, can be made. The submission of the proposal shall indicate Offeror's intent to be bound.

#### **C. Attachment 2, NI3 Mentor Program Application.**

Experience, qualifications, and pricing shall be submitted on Program Application (SECTION SEVEN, Attachment 2). The form is intended to allow the reviewing committee to compare candidate's qualifications and mentoring priorities. Instructions for completing the form are provided below.

##### Mentor District

Specify the proposed district to service - either "Maui", "East Hawaii", "West Hawaii", or "Kauai".

##### Statement of Qualifications

Highlight qualifications to serve as a mentor for Hawaii tech/innovation/high-growth startup companies in the proposed district.

##### Specialized Education/Training/Unique Qualifications

Indicate any unique qualifications that may help differentiate from other mentor candidates.

##### Top 3 accomplishments in relevant work experience

Provide examples from personal career that demonstrate a track record of success and a diverse background suited for advising companies.

#### References

Provide contact information for the examples for the reviewing committee to follow up with.

#### Top 3 most relevant mentorship experiences

Provide examples that demonstrate experience and ability as a mentor.

#### 3 Specific areas where young companies need the most help

Provide insight on experience working with startup businesses. Areas should be as specific as possible explaining where companies fail, why they fail, and recommendations to improve.

#### Top 3 lessons learned in product development, scaling operations

Provide insight on experience and building a globally competitive business. Lessons should be as specific as possible and targeted for Hawaii based companies.

#### Community Involvement

Provide examples that demonstrate strong working relationships and network within the regional community. Examples may include membership in organizations, participant in events, volunteer on a community board, instructor for workshops, etc.

#### Pricing

Provide pricing in \$ per hour, based on a 12 month contract for 40-80 hours (**contracted for 40 hours minimum, HTDC's option up to 80 hours**) per month. Driving time is generally considered overhead absorbed into the hourly rate and is not a billable expense at the hourly rate nor part of the 40-80 hours. Required off-island travel for quarterly meetings is billable and accounted for in the 40-80 hours. Alternative pricing or travel subsidy may be proposed in the notes section of the form (Form OF-2, part B, section k). **The hourly price shall be the all-inclusive cost, including the GET, to the State.** Unit prices shall be inclusive.

#### Awards / Alternate Pricing:

Include description of any and all relevant awards.

#### Summary of Judgments or Pending Lawsuits or Actions:

Including any adverse contract actions, terminations, suspensions, impositions of penalties, or other actions relating to failure to perform or deficiencies in fulfilling contractual obligations against you or your firm. If none, so state.

#### Notes:

Include alternate pricing, and any additional information in this section.

### **D. Supplemental Information**

Include as attachments – no more than 5 pages - all other relevant material to be considered – resume, website information, work samples, patents, testimonials, case studies, etc.

#### **E. Certificate of Compliance**

Offeror to include Certificate(s) of Compliance with all State Laws. See Section 5.4.1 on Hawaii Compliance Express (HCE).

**It is highly preferred and recommended to have compliance Certificate(s) included with the proposal at the time of proposal submission.** This will not affect acceptance of the proposal or Offerors scoring should it not be included.

### **3.4 PROPOSAL SUBMISSIONS**

Proposal must be electronically submitted via email to HTDC by the date and time as cited in Section 1.5, RFP Schedule and Significant Dates, or as amended.

Proposals to be emailed to: [rfp@htdc.org](mailto:rfp@htdc.org)  
Subject: NI3, RFP-15-006-HTDC

Timely receipt of offers shall be evidenced by the date and time of proposal email delivery. Proposals received after the deadline shall not be accepted.

**It is the responsibility of the Offeror to ensure that their proposal has been successfully received by HTDC.**

HTDC will provide an email confirmation to Offeror upon receipt of proposal. If Offeror does not receive a confirmation, Offeror may contact the Official Contact Person and Contract Administrator referenced in Section 1.8 to ensure that the proposal was successfully received.

## **SECTION FOUR**

### **EVALUATION CRITERIA**

#### **4.1. INTRODUCTION**

The evaluation of proposals received in response to the RFP will be conducted comprehensively, fairly and impartially. Structural, quantitative scoring techniques will be utilized to maximize the objectivity of the evaluation. The Evaluation Committee will evaluate each proposal in accordance with the criteria set forth below. The evaluation criteria and corresponding points are listed below. Primary Award(s) will be made to the responsive, responsible Offeror(s) whose proposal is determined to be the most advantageous to the State of Hawaii based on the evaluation criteria listed in this section.

#### **4.2. EVALUATION CATEGORIES AND SCORING**

The total number of points used to score this contract is 100.

- 1) Cost of Services (40)
- 2) Previous experience, capability and proficiency in business mentoring. (30)
  - a. Overall strength of candidate experiences, training, and resume.
    - i. Industry  
(Raising capital, new product development, market research, business development, project management, strategic partnership, sales, marketing, merger and acquisition, technical skills, etc.)
    - ii. Academic and formal best practice training
    - iii. Consulting
    - iv. Board/advisor/mentor
  - b. Overall strength and relevance of accomplishments including comments from references. (project scope, breadth, depth, relevance, diversity, customer satisfaction, etc.)
  - c. Overall strength and relevance of mentorship experiences including comments from references and client listings. Demonstrated ability assisting companies through early stage of growth.
  - d. Professionalism, knowledge, and communication.  
(Sample projects, written plans and reports, blogs, op-eds, publications, hosted seminars, etc.)
  - e. Additional technical skills relevant to NI3 program companies.
- 3) Program fit (30)
  - a. Strong communication and customer service skills to work with clients.
  - b. Demonstrated ability to independently provide service to the client on behalf of HTDC and work as a team with all involved parties.
  - c. Demonstrates knowledge and proficiency working in multiple industries relevant to the NI3 program.
  - d. Demonstrates ability to clearly communicate insights gained from related experiences. Insights are consistent with HTDC programs and client needs.
  - e. Familiarity and strong working relationships within the regional community.

- f. Familiarity and strong working relationships with HTDC, HTDC's partners, and other state programs.

During this phase, the evaluation committee shall evaluate the Offeror's proposal against requirements specified in this RFP. Based on a 100-point scale, proposals must score a minimum of 50 points for further award consideration. Proposals scoring less than 50 points shall not be considered for project award.

## SECTION FIVE

### **CONTRACTOR SELECTION AND CONTRACT AWARD**

#### **5.1 EVALUATION OF PROPOSALS**

The Procurement Officer, or an evaluation committee of at least three (3) qualified State employees selected by the Procurement Officer, shall evaluate proposals. The evaluation will be based solely on the evaluation criteria set out in Section Four of this RFP.

Prior to holding any discussion, a priority list shall be generated consisting of offers determined to be acceptable or potentially acceptable. **However, proposals may be accepted without such discussions.**

If numerous acceptable and potentially acceptable proposals are submitted, the evaluation committee may limit the priority list to the three highest ranked, responsible Offerors.

For details on an Overview of the RFP process, see Exhibit B.

#### **5.2 DISCUSSION WITH PRIORITY LISTED OFFERORS**

The State may invite priority listed Offerors to discuss their proposals to ensure thorough, mutual understanding. The State in its sole discretion shall schedule the time and location for these discussions, generally within the timeframe indicated in *RFP Schedule and Significant Dates*. The State may also conduct discussions with priority listed Offerors to clarify issues regarding the proposals before requesting Best and Final Offers, if necessary.

A presentation may be requested by HTDC from all Priority Listed Offerors prior to discussions.

#### **5.3 AWARD OF CONTRACT**

**Method of Award.** Award will be made to the responsible Offeror(s) whose proposal is determined to be the most advantageous to the State based on the evaluation criteria set forth in the RFP.

#### **5.4 RESPONSIBILITY OF OFFERORS**

##### **5.4.1 Compliant with all State laws**

Offeror is advised that in order to be awarded a contract under this solicitation, Offeror will be required to be compliant with all laws governing entities doing business in the State, including the following chapters and pursuant to HRS §103D-310(c):



1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Worker's Compensation Law;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and
6. §103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

### **The State will verify compliance on Hawaii Compliance Express (HCE)**

It is the Offerer's responsibility to be Compliant at the time of award and throughout the duration of the contract.

**Hawaii Compliance Express.** The HCE is an electronic system that allows vendors/contractors/service providers doing business with the State to quickly and easily demonstrate compliance with applicable laws. It is an online system that replaces the necessity of obtaining paper compliance certificates from the Department of Taxation, Federal Internal Revenue Service; Department of Labor and Industrial Relations, and Department of Commerce and Consumer Affairs.

Vendors/contractors/service providers should register with (HCE) prior to submitting an offer at <https://vendors.ehawaii.gov>. The annual registration fee is nominal and the 'Certificate of Vendor Compliance' is accepted for the execution of contract and final payment.

**Timely Registration on HCE.** If not already, Vendors/contractors/service providers are highly advised to register and complete the compliance process on HCE as soon as possible.

**If a vendor/contractor/service provider is not compliant with all State laws at the time of award, an Offeror may not receive the award.**

### **5.1.2 Insurance Requirement**

Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State, to be in full force and effect throughout the term of the contract.

See Exhibit C.

## **5.5 PROPOSAL AS PART OF THE CONTRACT**

This RFP and all or part of the successful proposal may be incorporated into the contract.

## **5.6 PUBLIC EXAMINATION OF PROPOSALS**

Except for confidential portions, the proposals shall be made available for public inspection upon posting of award. If a request for confidentiality is denied, such information shall be disclosed as public information, unless the person appeals the denial to the Office of Information Practices in accordance with HRS §92F-42(12).

## **5.7 DEBRIEFING**

Pursuant to HAR §3-122-60, a non-selected Offeror may request a debriefing to understand the basis for award.

A written request for debriefing shall be made within three (3) working days after the posting of the award of the contract. The Procurement Officer or designee shall hold the debriefing within seven (7) working days to the extent practicable from the receipt date of written request.

Any protest by the requestor following a debriefing shall be filed within five (5) working days, as specified in HAR §103D-303(h).

## **5.8 PROTEST PROCEDURES**

Any protest shall be submitted in writing to the Procurement Officer at:

HTDC Procurement Officer  
2800 Woodlawn Drive Ste 100  
Honolulu, HI 96822

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers; and further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award or if requested, within five (5) working days after the PO's debriefing was completed.

The notice of award, if any, resulting from this solicitation shall be posted on the Procurement Awards, Notices and Solicitations (PANS), which is available on the SPO website: <http://www.hawaii.gov/spo2/source/>.

## **5.9 RECEIPT AND REGISTER OF PROPOSALS**

The submission of a proposal shall constitute incontrovertible representation by the Offeror of compliance with every requirement of the RFP, and that the RFP documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

HTDC must receive sealed proposals no later than the date and time specified in Section One, or as amended. Timely receipt of proposals shall be evidenced by the date and time registered by HTDC. Proposals received after the deadline shall be returned unopened.

The register of proposals and proposals of the Offeror(s) shall be open to public inspection upon posting of award.

## **5.10 BEST AND FINAL OFFER (BAFO)**

**Proposals may be accepted on evaluation without discussion.** However, if deemed necessary, prior to entering into discussion, a "priority list" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The

priority list may be limited to a minimum of three responsible Offerors who submitted the highest-ranked proposals. The objective of these discussions and/or presentations is to clarify issues regarding the Offeror's proposal before the BAFO is tendered.

If during discussions and/or presentations there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to incorporate such clarification or change. Addenda to the RFP shall be distributed only to priority listed Offerors.

Following any discussions, if the State determines a BAFO is necessary, it shall request one from the Offeror. The Offeror shall submit its BAFO prior to the deadline as stated in the RFP *Schedule and Significant Dates*, Section 1.5, as amended. If an Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous proposal shall be construed as its BAFO.

## **5.11 MODIFICATION PRIOR TO SUBMITTAL DEADLINE OR WITHDRAWAL OF OFFERS**

Any Offeror is allowed to modify or withdraw their proposal prior to the established proposal due date by submitting the following documents:

### **5.11.1 Modification of Proposals**

- a. Written notice accompanying the actual modification received by the Contact Person stating that the modification to the proposal is submitted; or
- b. A written notice accompanying the actual modification by facsimile machine or email, pursuant to section 3-122-9 HAR, to the Contact Person.

### **5.11.2 Withdrawal of Proposals**

- a. A written notice received by the Contact Person; or
- b. A notice by facsimile machine or email, pursuant to section 3-122-9-HAR, to the Contact Person.

## **5.12 MISTAKES IN PROPOSALS**

5.12.1 Mistakes shall not be corrected after award of contract.

5.12.2 When the Procurement Officer knows or has reason to conclude before award that a mistake has been made, the Procurement Officer should request the Offeror to confirm the proposal. If the Offeror alleges mistake, the proposal may be corrected or withdrawn pursuant to this section.

5.12.3 Once discussions are commenced or after best and final offers are requested, any priority-listed Offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.

5.12.4 If discussions are not held, or if the best and final offers upon which award will be made have been received, mistakes shall be corrected to the intended correct offer whenever the mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn.

- 5.12.5 If discussions are not held, or if the best and final offers upon which award will be made have been received, an Offeror alleging a material mistake of fact which makes a proposal non-responsive may be permitted to withdraw the proposal if: the mistake is clearly evident on the face of the proposal but the intended correct offer is not; or the Offeror submits evidence which clearly and convincingly demonstrates that a mistake was made.
- 5.12.6 Technical irregularities are matters of form rather than substance evident from the proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other Offerors; that is, when there is no effect on price, quality, or quantity. If discussions are not held or if best and final offers upon which award will be made have been received, the Procurement Officer may waive such irregularities or allow an Offeror to correct them if either is in the best interest of the State. Examples include the failure of an Offeror to: return the number of signed proposals required by the request for proposals; sign the proposal, but only if the unsigned proposal is accompanied by other material indicating the Offeror's intent to be bound; or to acknowledge receipt of an amendment to the request for proposal, but only if it is clear from the proposal that the Offeror received the amendment and intended to be bound by its terms; or the amendment involved had no effect on price, quality or quantity.

### **5.13 TAX LIABILITY**

- 5.13.1 Work to be performed under this solicitation is a business activity taxable under HRS Chapter 237, and if applicable, taxable under HRS Chapter 238. Contractor is advised that it is liable for the Hawaii general excise tax (GET). If, however, an Offeror is a person exempt by the HRS from paying the GET and therefore not liable for the taxes on this solicitation, Offeror shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.
- 5.13.2 Federal I.D. Number and Hawaii General Excise Tax License I.D. Offeror shall submit its current Federal I.D. No. and Hawaii General Excise Tax License I.D. number in the space provided on Offer Form, page OF-1, thereby attesting that the Offeror is doing business in the State and that Offeror will pay such taxes on all sales made to the State.

### **5.14 PROPERTY OF STATE**

All proposals become the property of the State of Hawaii.

### **5.15 CONFIDENTIAL INFORMATION**

- 5.15.1 If an Offeror believes that any portion of a proposal, offer, specification, protest, or correspondence contains information that should be withheld from disclosure as confidential, then the Offeror shall inform the Procurement Officer named on the cover of this RFP in writing and provide the Procurement Officer with justification to support the Offeror's confidentiality claim. Price is not considered confidential and will not be withheld.
- 5.15.2 An Offeror shall request in writing nondisclosure of information such as designated trade secrets or other proprietary data Offeror considers to be confidential. Such requests for nondisclosure shall accompany the proposal, be

clearly marked, and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal.

#### **5.16 EXCEPTIONS**

Should Offeror take any exception to the terms, conditions, specifications, or other requirements listed in the RFP, Offeror shall list such exceptions in this section of the Offeror's proposal. Offeror shall reference the RFP section where exception is taken, a description of the exception taken, and the proposed alternative, if any. The State reserves the right to accept or not accept any exceptions.

No exceptions to the requirements of the AG General Conditions shall be considered.

#### **5.17 PROPOSAL REPARATION COSTS**

Any and all costs incurred by the Offeror in preparing or submitting a proposal shall be the Offeror's sole responsibility whether or not any award results from this RFP. The State shall not reimburse such costs.

#### **5.18 APPROVALS**

Any contract awarded under this solicitation may be subject to the approval of the Department of the Attorney General, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.

#### **5.19 CONTRACT EXECUTION**

Successful Offeror receiving award shall enter into a formal written contract. No performance or payment bond is required for this contract.

No work is to be undertaken by the Contractor prior to the effective date of contract. The State of Hawaii is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to the official starting date.

If an option to extend is mutually agreed upon, the Contractor shall be required to execute a supplement to the contract for the additional extension period.

#### **5.20 PAYMENT**

Incremental payments shall be made to the awarded Contractor on a monthly basis, upon receipt of activity reports and the satisfactory performance of services that meet the expectations of the RFP. The receipt of monthly activity reports shall be due based on the timeline submitted by the Contractor in the proposal, or as agreed upon in the contract.

Section 103D-10, HRS, provides that the State shall have thirty calendar days from receipt of invoice or satisfactory delivery of goods or performance of services to make payment. For this reason, the State will reject any proposal submitted with a condition requiring payment within a shorter period. Further, the State will reject any proposal submitted with a condition requiring interest payments greater than that allowed by HRS section 103-10, as amended.

The State will not recognize any requirement established by the Contractor and communicated to the State after award of the contract which requires payment within a shorter period or interest payment not in conformance with law.

#### **5.21 CONTRACT INVALIDATION**

If any provision of the contract is found to be invalid, such invalidation will not be construed to invalidate the entire contract.

#### **5.22 SUBCONTRACTING**

No work or services shall be subcontracted or assigned without the prior written approval of the State. No subcontract under any circumstances relieves the Contractor of its obligations and liability under the contract with the State. All persons engaged in performing the work covered by the contract shall be considered employees of the Contractor.

#### **5.23 CONFLICTS OF INTEREST**

The Contractor represents that neither the Contractor nor any employee or agent of the Contractor presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Contractor's performance of the contract.

#### **5.24 CAMPAIGN CONTRIBUTIONS BY STATE AND COUNTY CONTRACTORS**

It has been determined that funds for this contract have been appropriated by a legislative body. Therefore, the Contractor agrees to comply with HRS section 11-355, which states that campaign contributions are prohibited from a state and county government contractor during the term of the contract if the contractor is paid with funds appropriated by a legislative body between the execution of the contract through the completion of the contract.

#### **5.25 NON-DISCRIMINATION**

The Contractor shall comply with all applicable federal and state laws prohibiting discrimination against any person on the grounds of race, color, national origin, religion, creed, sex, age, sexual orientation, marital status, handicap, or arrest and court records in employment and any condition of employment with the Contractor or in participation in the benefits of any program or activity funded in whole or in part by the State.

#### **5.26 BREACH OF CONTRACT**

It is noted that any violation of the provisions of the contract, unless excused, is a breach of the contract and may be cause for termination and any other rights and remedies allowed by law.

Pursuant to Subchapter 2 of Chapter 126, HAR, and Section 103D-702, HRS, HTDC, after consultation with the attorney general and upon written determination by the Chief Procurement Officer or designee, may seek to suspend or debar the contractor for cause.

## **5.27 INSPECTION & PROCEDURAL CHANGES - REIMBURSEMENT FOR UNACCEPTABLE DELIVERABLES**

The Contractor is responsible for the completion of all work set out in the contract. All work is subject to inspection, evaluation, and approval by the CA. The State may employ all reasonable means to ensure that the work is being performed in compliance with the contract.

Should the CA determine that corrections or changes are necessary in order to accomplish the contract's intent, the CA may direct the Contractor to make such changes.

Failure of the Contractor to perform any provisions of the contract may cause the State to terminate the contract. In this event, the State may require the Contractor to reimburse monies paid (based on the identified portion of unacceptable work received), may seek associated damages, and any other relief in accordance with law.

## **5.28 CONTRACT MODIFICATIONS - UNANTICIPATED AMENDMENTS**

During the course of the contract, the Contractor may be required to perform additional work that will be within the general scope of the initial contract. When additional work is required, the CA will provide the Contractor a written description of the additional work and request the Contractor to submit a firm time schedule for accomplishing the additional work and a firm price for the additional work.

Changes to the contract may be modified only by written document (contract modification) signed by the State and the Contractor's personnel authorized to sign contracts on behalf of the Contractor.

The Contractor will not commence additional work until a signed contract modification has been issued.

## SECTION SIX

### SPECIAL PROVISIONS

#### 6.1 OFFER GUARANTY

A proposal security deposit is NOT required for this RFP.

#### 6.2 CERTIFICATION OF OFFEROR CONCERNING WAGES, HOURS AND WORKING CONDITIONS OF EMPLOYEES SUPPLYING SERVICES *(include as applicable)*

All Offerors for service contracts shall comply with section 103-55, Hawaii Revised Statutes, which provides as follows:

Wages, hours, and working conditions of employees of CONTRACTOR supplying services: Before any prospective Offeror is entitled to submit any offer for the performance of any contract to supply services in excess of \$25,000 to any governmental agency, Offeror shall certify that the services to be performed will be performed under the following conditions:

Wages: The services to be rendered shall be performed by employees paid at wages or salaries not less than the wages paid to public officers and employees for similar work.

Compliance with labor laws: All applicable laws of the Federal and State governments relating to workers compensation, unemployment compensation, payment of wages, and safety will be fully complied with.

No contract to perform services for any governmental contracting agency in excess of \$25,000 shall be granted unless all the conditions of this section are met. Failure to comply with the conditions of this section during the period of the contract to perform services shall result in cancellation of the contract.

It shall be the duty of the governmental contracting agency awarding the contract to perform services in excess of \$25,000 to enforce this section.

This section shall apply to all contracts to perform services in excess of \$25,000, including contracts to supply ambulance service and janitorial service.

This section shall not apply to:

- (1) Managerial, supervisory, or clerical personnel.
- (2) Contracts for supplies, materials, or printing.
- (3) Contracts for utility services.
- (4) Contracts to perform personal services under paragraphs (2), (3), (12), and (15) of section 76-16, paragraphs (7), (8), and (9) of section 46-33, and paragraphs (7), (8), and (12) of section 76-77, Hawaii Revised Statutes, (HRS).
- (5) Contracts for professional services.
- (6) Contracts to operate refreshment concessions in public parks, or to provide food services to educational institutions.
- (7) Contracts with nonprofit institutions.



**SECTION SEVEN**

**ATTACHMENTS AND EXHIBITS**

- Exhibit A: AG GENERAL CONDITIONS
- Exhibit B: OVERVIEW OF THE RFP PROCESS
- Exhibit C: LIABILITY INSURANCE REQUIREMENT
  
- Attachment 1: OFFER FORM
- Attachment 2: N13 MENTOR PROGRAM APPLICATION

## EXHIBIT A

## AG GENERAL CONDITIONS

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.
3. Personnel Requirements.
- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
  - b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.
6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.
- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
    - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
    - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
    - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
  - b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
  - d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
  - e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
  - f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.
14. Termination for Convenience.
- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
  - b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the



total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
    - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
    - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
    - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
  - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
  - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
  - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.
16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
  - b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
  - c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.
17. Payment Procedures: Final Payment: Tax Clearance.
- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
  - b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
  - c. Prompt payment.
    - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
    - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
  - d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.
18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.
19. Modifications of Contract.
- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
  - b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
    - (5) Method of shipment or packing of supplies; or
    - (6) Place of delivery.
  - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- The cost or pricing data, and
  - A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
  - a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

    - (1) Social security number;
    - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:



- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

## EXHIBIT B

### OVERVIEW OF THE RFP PROCESS

The following is a general overview of the RFP process. Further detail and explanation of each step is provided below. The RFP is issued pursuant to Subchapter 6 of HAR Chapter 3-122, implementing HRS Section 103D-303.

A. The procurement process begins with the issuance of the RFP, and registration of your company.

B. Submit written questions regarding the RFP prior to date and time provided in section 1.5 RFP Schedule and Significant Dates.

C. Formal responses to written questions and changes to the RFP will be made only by Addendum.

D. Proposal shall be prepared in accordance with the requirements of this RFP and follow the additional guidelines in Section 3.3.

E. Proposals must be received by the date and time provided in Section 1.5 RFP Schedule and Significant Dates, as evidenced by the HTDC electronic mail time stamp.

F. Any Offeror is allowed to modify or withdraw their proposal prior to the established proposal due date by following the procedure described in Section 5.12.

G. Proposals shall not be opened publicly, but shall be opened in the presence of two (2) or more procurement officials. All proposals and other material submitted by Offerors become the property of the State and may be returned only at the State's option.

H. The register of proposals and Offerors' proposals shall be open to public inspection after posting of the award.

I. The evaluation committee selected by the Procurement Officer shall evaluate the proposals in accordance with the evaluation criteria in Section 4. The proposals shall be classified initially as acceptable, potentially acceptable, or unacceptable.

**J. Proposals may be accepted on evaluation without discussion.**

K. If discussions are deemed necessary, prior to entering into discussions, a "Priority List" of responsible Offerors submitting acceptable and potentially acceptable proposals shall be generated. The Priority List may be limited to a minimum of three responsible Offerors who submitted the highest-scored proposals. The objective of these discussions is to clarify issues regarding the Offeror's proposal before the Best and Final Offer (BAFO) is tendered.

L. A presentation may be requested by HTDC from all Priority Listed Offerors prior to discussions.

M. If during presentations or discussions with Priority Listed Offerors there is a need for any substantial clarification or change in the RFP, the RFP shall be amended by an addendum to

incorporate such clarification or change. Addenda to the RFP shall be distributed only to Priority Listed Offerors.

N. Following any discussions, Priority Listed Offerors will be invited to submit their BAFO, if required. The evaluation committee reserves the right to have additional rounds of discussions with the Priority Listed Offerors prior to the submission of the BAFO.

O. The date and time for Offerors to submit their BAFO, if any, is indicated in Section 1.5, RFP Schedule and Significant Dates. If Offeror does not submit a notice of withdrawal or a BAFO, the Offeror's immediate previous offer shall be construed as its BAFO.

P. BAFO will be scored in accordance with the evaluation criteria in Section 4. The evaluation committee will then make its recommendation. The Procurement Officer will award the contract to the Offeror whose proposal is determined to be the most advantageous to the State taking into consideration price and the evaluation factors set forth in Section 4.

Q. The contents of any proposal shall not be disclosed during the review, evaluation, discussion, presentation or negotiation process. Once award notice is posted, all proposals, successful and unsuccessful, become available for public inspection. Those sections that the Offeror and the State agree are confidential and/or proprietary identified by the Offerors, shall be excluded from access.

R. The evaluation committee reserves the right to determine what is in the best interest of the State for purposes of reviewing and evaluating proposals submitted in response to the RFP. The evaluation committee will conduct a comprehensive, fair and impartial evaluation of proposals received in response to the RFP.

S. The RFP, any addenda issued, and the successful Offeror's proposal shall become a part of the contract. All proposals shall become the property of the State of Hawaii.

## EXHIBIT C

### LIABILITY INSURANCE REQUIREMENT

Prior to the contract start date, the Contractor shall procure at its sole expense and maintain insurance coverage acceptable to the State, to be in full force and effect throughout the term of the contract. The Offeer shall provide proof of insurance for the following minimum insurance coverage(s) and limit(s) in order to be awarded a contract. The type of insurance coverage is listed as follows:

**GENERAL LIABILITY:** Coverage of no less than \$1 million per occurrence, and \$2 million in the aggregate (the maximum amount paid for claims during a policy term).

**PROFESSIONAL LIABILITY:** Coverage of no less than \$1 million per claim, and \$2 million in aggregate.

**AUTOMOBILE INSURANCE:** Coverage of no less than \$1 million per accident, covering owned, non-owned, leased and hired vehicles.

Each insurance policy required, including any subcontractor's policy, shall contain the following clauses:

1. "This insurance shall not be canceled, limited in scope of coverage or non-renewed until after 30 days' written notice has been given to the State of Hawaii, High Technology Development Corporation, 2800 Woodlawn Drive, Suite 100, Honolulu, Hawaii, 96822."
2. "The State of Hawaii, its departments, attached agencies, officers, employees, and agents are added as additional insureds with respect to operations performed for the State of Hawaii."
3. "It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by this policy."

The procuring of such required insurance shall not be construed to limit the Contractor's liability under the contract or to fulfill the indemnification provisions and requirements of the contract. Notwithstanding said policy or policies of insurance, the Contractor shall be obligated for the full and total amount of any damage, injury, or loss caused by negligence or neglect connected with the contract.